United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

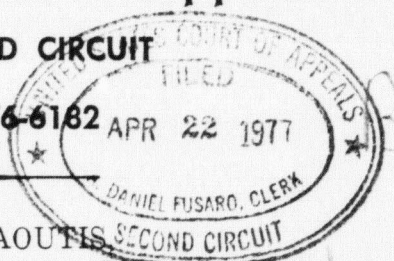
76-6182

To be argued by
ROBERT S. GROBAN, JR.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6182



STEFANOS ZAOUTIS,
Plaintiff-Appellee,

—v.—

MAURICE KILEY, as District Director for the New York District of the Immigration and Naturalization Service, and IMMIGRATION AND NATURALIZATION SERVICE,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF OF DEFENDANTS-APPELLANTS

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REPLY BRIEF OF DEFENDANTS-APPELLANTS

Preliminary Statement

Defendants-Appellants Maurice F. Kiley ("New York District Director") and the Immigration and Naturalization Service ("Service") submit this brief in reply to the brief submitted by plaintiff-appellee Stephanos Zaoutis ("Zaoutis"). This brief is necessary because, in misconstruing the contentions made in our main brief and in referring to cases which fail to support the propositions for which they were cited, Zaoutis' brief has attempted to obfuscate our principal contention that the District Court's decision to adhere to the "plain meaning"[1] of Section

[1] *See Eck* v. *United Arab Airlines*, 360 F.2d 804, 812-4 (2d Cir. 1966); pages 22-3 of our main brief.

246(a) of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1256(a), without inquiry into legislative history surrounding the peculiar language which appears in that provision, was error since such an examination clearly shows that Congress intended the service of a notice of intention to rescind to toll the statute of limitations contained in Section 246(a).

ARGUMENT

POINT I

Section 246(a) Should Be Construed In A Reasonable Manner.

In our main brief we compared the sections of the Act and regulations relating to deportation with those pertaining to rescission proceedings under Section 246(a) to show that, since an order of deportation cannot result from a rescission proceedings, Section 246(a) could not be a deportation statute [2] and therefore should be interpreted in a reasonable manner, consistent with its purpose in the Act and the Governmental interest it embodies (INS brief Point I-A, pages 19-21).[3] We further demonstrated that this Court's adoption of our conclusion would be consistent with its prior application of favorable rules of statutory construction to deportation statutes because an alien who has had his status rescinded under Section 246(a) cannot be ordered deported until a deportation

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[2] This Court has recognized that deportation can be a drastic sanction by generally requiring *deportation statutes* to be strictly construed. *Bonsztejn* v. *Immigration and Naturalization Service*, 526 F.2d 1290 (2d Cir. 1975).

[3] References preceded by INS brief refer to the pages of our main brief, previously submitted to this Court.

hearing has been held pursuant to 8 C.F.R. § 242, during which the alien would not only receive the protection of this Court's favorable rule of construction but, more importantly, might be able to obtain relief from deportation based on the favorable record he had compiled since entering this country. *See* Gordon and Rosenfield, *Immigration Law and Procedure*, Chapter Seven.

In response, Zaoutis challenged this conclusion by asserting that "rescission usually results in deportation" (Zaoutis brief 27), since aliens subject to deportation because of rescission are less able to obtain relief from deportation than other deportable aliens (Zaoutis brief 28), and by referring to decisions from the Courts of Appeals in other circuits which, he contended, had equated the results of rescission and deportation proceedings (Zaoutis brief 27). A brief discussion of these contentions and of the procedural history of this action will demonstrate the propriety of our conclusion as to the proper interpretation of this statute.

While an alien whose status has been rescinded may be found deportable at a subsequent deportation hearing, Zaoutis' conclusion that this almost automatically results because the alien is at a disadvantage in qualifying for discretionary relief is unjustified as this case illustrates. Because of the five year statute of limitations in Section 246(a), the criminal consequences surrounding rescission,[4] and the length of time it takes to finally complete rescission proceedings that the Service has instituted in a timely manner, an alien, like Zaoutis, who becomes the subject of a rescission proceeding should have an *ad-*

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[4] Individuals who conspire to defraud the United States or who knowingly and willfully falsify material facts to agencies of the United States are subject to prosecution under 18 U.S.C. §§ 371, 1001-2 respectively.

vantage in applying for discretionary relief at a subsequent deportation proceeding since he has been able to reside in this country for a substantial period of time and to accumulate a favorable immigration record to offset whatever fraud he may have perpetrated to obtain his adjustment of status. For example, as a result of Zaoutis' agreement to acquiesce in the delay of his rescission proceedings to gain a more favorable immigration record by testifying before the Bar Association Disciplinary Committee,[5] Zaoutis could have accumulated sufficient time in this country to qualify for suspension of deportation,[6] if his deportation were ordered. In this regard Zaoutis' contention, that suspension of deportation may be only an illusory form of relief to an alien who, like Zaoutis, has utilized his permanent resident status less than five years after adjustment to

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[5] In his brief at page 8, Zaoutis attempts to attribute this delay to "a deliberate Service decision to postpone the hearing." To support this allegation Zaoutis refers to a September 9, 1970 memorandum in his immigration file which reflects a conversation between the Service, Zaoutis' attorney and a representative of a Bar Association disciplinary committee in which the Bar Association representative requested the Service to hold Zaoutis' rescission hearing in abeyance until disciplinary proceedings against a certain attorney were conducted. In light of Zaoutis' attorneys participation in this conversation and his apparent acquiescence in the delay, his claim of deliberate Service efforts to postpone his rescission hearing are clearly without merit. *See also* Point II in our main brief.

[6] In order to be eligible for suspension of deportation under Section 244(a)(1) of the Act, 8 U.S.C. § 1254(a)(1), an alien must demonstrate, *inter alia*, that he has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of his application.

interrupt his residence and travel abroad (Zaoutis brief, page 28), *See Heitland* v. *Immigration and Naturalization Service*, Docket No. 76-4141 (2d Cir. Decided January 27, 1977), is inopposite to this discussion. Clearly, even under Zaoutis' interpretation of Section 246(a), an alien, who has fraudulently acquired his permanent residence status, leaves this country at his peril until five years have elapsed from the date on which his status was granted.

The decisions referred to by Zaoutis in his brief (Zaoutis brief page 27) also do not establish such an "integral relationship" between rescission and deportation proceedings to justify the application of a more stringent rule of statutory construction to the issue in this appeal. Unlike this appeal, *Yaldo* v. *Immigration and Naturalization Service*, 424 F.2d 501 (6th Cir. 1970); *Rodriguez* v. *Immigration and Naturalization Service*, 389 F.2d 129 (3d Cir. 1968). *Waziri* v. *United States Immigration and Naturalization Service*, 392 F.2d 55 (9th Cir. 1955) and *Marino* v. *Immigration and Naturalization Service, United States Department of Justice*, 537 F.2d 686 (2d Cir. 1976), all concern petitions for review under Section 106(a) of the Act, 8 U.S.C. § 1105a(a), in which the petitioners requested the courts not only to review the deportation orders entered against them pursuant to Section 242 of the Act, 8 U.S.C. § 1252, and 8 C.F.R. § 242, but also sought review of other matters which were either part of the deportation proceeding (*Marino*—denial of adjustment of status) or were matters upon which the deportation orders were based (*Yaldo, Rodriguez* and *Waziri*—rescission orders). While the courts agreed to consider these other matters, these decisions clearly do not reflect any judicial belief that rescission orders are tantamount to deportation orders and thus

must be considered in the same manner. Rather the decision manifest the courts' recognition of the judicial economies resulting from reviewing all the issues at one time as well as the absence of any other judicial proceeding available to these petitioners that could review their rescission orders before they were deported. Apparently Zaoutis also interpreted these decisions in this manner because he instituted this action in the District Court pursuant to Section 279 of the Act, 8 U.S.C. § 1329 (A. 4), rather than in the Court of Appeals pursuant to Section 106(a) of the Act, 8 U.S.C. § 1105a(a).

Finally, even if Section 246(a) were to be referred to as a deportation statute, a conclusion which we have demonstrated has no basis either in the Act or the judicial decisions interpreting the Act, this still would not justify a construction of the statute which was inconsistent with Congress' intentions or the Governmental interest reflected in Section 246(a). As this Court recently stated in *Hibbert* v. *Immigration and Naturalization Service*, Docket No. 76-4172 (2d Cir. Decided April 5, 1977):

> ". . . there is no reason to strain for hypertechnical readings of [immigration] statutes in order to grant relief to those never intended for the law's benefits. See *Heitland* v. *INS*, slip op. 1599, 1616-17 (2d Cir. 1977)."

POINT II

Congress Intended Service Of A Notice Of Intent To Rescind To Toll The Statute Of Limitations In Section 246(a).

In both his memorandum to the District Court (A. 115-17) and his brief to this Court (Zaoutis brief 35-9), Zaoutis asserted that if Congress had wanted Section 246 (a) to be interpreted like a conventional statute of limitation it could easily have inserted language into that Section which said so and the fact that it did not, and specifically chose language that was markedly different from conventional statutes of limitations, indicated Congress' intention for Section 246(a) to be interpreted to its "plain meaning". In response to this contention and in recognition of the peculiar language used in Section 246(a), we decided to examine the historical antecedents of that language to determine how Congress wished it to be construed. As we discussed in our main brief (INS brief Point I-B, pages 21-9), the results of this inquiry revealed that the language selected by Congress had been consistently interpreted as a conventional statute of limitations since it was first inserted into the Act in 1888 and that, by deliberately incorporating this language into Section 246(a), Congress clearly must have intended this construction to continue.

In his brief Zaoutis attempted to obfuscate the clear legislative, administrative and judicial history supporting the Service's construction of Section 246(a) and to mitigate that history's impact on this case by characterizing our argument as a "deference" argument and asserting that the history of Section 246(a) was included in our brief merely to establish the type of long-standing statutory interpretation by an agency to which the Courts

should accord great deference (Z.B. pages 42-4). In addition Zaoutis claimed that the legislative and judicial history contained in our brief did not support our conclusion that the language in Section 246(a) had been consistently interpreted like a conventional statute of limitations. A brief examination of both of these contentions will demonstrate the propriety of the conclusions reached in our main brief.

The District Court's decision in this action adopted a "plain meaning" approach to the construction of Section 246(a) despite the anomalous and absurd results it engendered. In our main brief we examined the history of the language used in Section 246(a) to demonstrate the District Court's error and to show that the "plain meaning" of this language actually supported the Service's position. While this inquiry does reveal a long-standing administrative interpretation of a statute similar to those which the Courts have accorded great deference, *see Udall* v. *Tallman*, 380 U.S. 1, 16 (1964), this clearly was not its primary purpose. Rather it was included in the brief pursuant to the cardinal principle of statutory construction that language having a well-known meaning in prior laws is presumed to retain that meaning in its current usage, absent a manifest legislative intent to the contrary. *Commissioner* v. *Noel Estate*, 380 U.S. 678, 681-82 (1964); *Standard Oil Co. of New Jersey* v. *United States*, 221 U.S. 1, 59 (1910); Sands, *Sutherland Statutory Construction*, Section 47.30 (4th Ed. 1973).

With the substantial history supporting the Service's construction of Section 246(a) in this case, Zaoutis' attempt to subvert our argument into one requesting reversal of the lower court's decision solely on the basis of the deference to which an administrative interpretation is entitled is understandable. However, the issue pre-

sented in this appeal is clearly a question of law involving statutory construction. As such, this Court is free to examine Section 246(a) without reference to either Zaoutis' contentions or the District Court's conclusions. *First National Bank of Cincinnati* v. *Sidney Pepper*, Docket Nos. 75-7519, 75-7545, at 533 (2d Cir. Decided November 16, 1976).

The judicial and administrative decisions referred to by Zaoutis in his brief also do not mitigate the conclusion that the language used by Congress in Section 246(a) manifests its intention that Section 246(a) to be construed as a conventional statute of limitations. In this regard Zaoutis initially attempts to circumvent most of the judicial decisions in our main brief by claiming that they could not be relevant since they construe immigration acts enacted after the Immigration Act of February 20, 1907,[7] the last statute prior to Section 246(a) in which the language referred to in our brief appears (Zaoutis brief page 44). While Zaoutis is correct in noting that this language does not appear in the pertinent sections of the 1917 immigration act construed by most of the decisions referred to in our brief, in passing that statute Congress recorded its clear intentions to "... *continue the practice established when the act of 1907 was passed* of expelling ... every alien who ... was found here within the period of limitation fixed. ..." (emphasis added) Senate Report No. 352, 64th Cong. 1st Sess., page 12 (1916).[8] As a result the consistent judicial and administrative decisions construing the deportation provisions of the 1917 act as a conventional statute of limitations are particularly

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[7] 34 Stat. 1213.

[8] This is the Senate Report which accompanied the Immigration Act of 1917 and to which we referred in our main brief (M.B. pages 25-6).

relevant in determining how the language which appeared in the 1907 act should be interpreted, and Zaoutis' contention to the contrary is unsustainable.

In addition the administrative decisions cited by Zaoutis in his brief do not reveal a departure from this consistent pattern of interpretation. In *Matter of T*, 8 I. & N. Dec. 96 (1958), the Service was not even presented with the question involved in this appeal because the order of rescission had been entered against the alien less than five years after his status had been adjusted. Similarly, in *Matter of S*, 9 I. & N. Dec. 548 (1962), the question presented to the Service involved not whether Section 246(a) barred the institution of rescission proceedings (which was conceded) but whether the statute of limitation in Section 246(a) precluded the Attorney General from instituting *exclusion* proceedings against a returning alien based upon his alleged fraudulent procurement of an entry visa prior to his adjustment of status. Clearly, neither of these decisions supports Zaoutis' contention that the Service has exhibited a "marked inconsistency of approach" on this issue (Z.B. page 53).

Furthermore, the judicial decisions upon which Zaoutis relies are no more persuasive. Thus, while *International Mercantile Marine Co.* v. *United States*, 192 F. 887 (2d Cir. 1912), appears to support Zaoutis' position in this appeal, several factors undermine this conclusion. Initially, contrary to Zaoutis' contentions, the case does not focus on Section 21 of the 1907 Act[9]

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[9] "Sec. 21. This in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this act, or that an alien is subject to deportation under the provisions of this act or any law of the

[Footnote continued on following page]

or concern whether an alien can be deported if apprehended but not deported within the statute of limitations contained in that section (Z.B. page 46). In fact, the alien involved in that case had been deported routinely pursuant to the administrative practice under Section 21, *see* Senate Report No. 352, *supra*, and the only issue remaining was whether the carrier, who brought the alien to this country, could be compelled to pay for his deportation under Section 20 of the 1907 act.[10] Secondly, the potential implications of the Court's decision were so contrary to both Congress' intentions in enacting the 1907 act and the administrative practice under that act, that Congress was forced to amend these provisions in 1917 [11] and to note that the object of these amendments was

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United States, he shall cause such alien within the period of three years after landing or entry therein to be take into custody, and returned to the country whence he came, as provided by section twenty of this act, and a failure or refusal on the part of the masters, agents, owners, or consignees of the vessel to comply with the order of the Secretary of Commerce and Labor to take on board, guard safely, and return to the country whence he came any alien ordered to be deported under the provisions of this act shall be punished by the imposition of the penalties prescribed in section nineteen of this act."

[10] "Sec. 20. That any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing, shall upon the warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States. Such deportation * * * shall be at the expense of the * * * person by whom the alien was unlawfully induced to enter the United States, or if that cannot be done, then the cost of removal to the port of deportaiton shall be at the expense of the 'immigrant fund' * * * and the deportation from such port shall be at the expense of the owner or owners of such vessel or transportation line by which such aliens respectively came."

[11] Immigration Act of February 5, 1917, 39 Stat. 874, Section 20, 8 U.S.C. § 156.

> ". . . to make perfectly clear the intent to continue the practice established when the act of 1907 was passed of expelling from the United States every alien who . . . was found here within the period of limitation fixed . . . and . . . to continue the practice established under that act . . . of expelling aliens . . . wherever the proceedings are instituted within the period of limitation specified therein." Senate Report No. 352, at page 12.

Finally, Congress' expression of its intentions in enactng the 1907 act, as manifested by the changes incorporated into the 1917 act and the Senate Report explaining the purpose behind those changes, casts severe doubt on the initial viability of the Court's decision in *International Mercantile.* For example, while the pertinent changes incorporated into the 1917 act only affected the statute of limitations contained in Section 20 of the 1907 Act, the provision relating to the payment of the costs of deportation by a carrier,[12] the Second Circuit's later opinions, see *United States ex rel. David* v. *Tod*, 289 F. 60 (2d Cir. 1923) and *United States ex rel. Patton* v. *Tod*, 297 F. 385 (2d Cir. 1924), *appeal dismissed per stipulation*, 267 U.S. 607 (1925), recognized that Congress' purpose behind those changes was also to have the statute of limitations contained in Section 19 of the 1917 act, the section generally applicable to deportation, construed as a conventional statute of limita-

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[12] Section 20 of the Act of 1907, *see* footnote 12, *supra,* was amended to provide:

> "If deportation proceedings are instituted at any time within five years after the entry of alien, such deportation . . . shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States. . . ." Section 20 of the Act of 1917, 8 U.S.C. § 156.

tions and the Court incorporated this purpose into its decisions. *See also United States ex rel. Ginal* v. *Day*, 22 F.2d 1022 (2d Cir.), *cert. denied*, 276 U.S. 627 (1927).

Finally, the Second Circuit decision in *United States ex rel. Danikas* v. *Day*, 20 F.2d 733 (2d Cir. 1927), the other case relied upon by Zaoutis, does not disturb the consistent manner in which all Courts, with the exception of the Third Circuit and the District Court in this action, have implemented Congress' intentions and construed statutes of limitations emanating from the 1907 act like conventional statutes of limitation. Thus, in *Danikas* the Court was not asked to construe the statute of limitations in Section 19 or any other section of the 1917 Act which had a precursor in the 1907 Act and which Congress specifically intended to be construed as a conventional statute of limitations. Rather *Danikas* concerned Section 34 of the 1917 Act, an exception to Section 19, which was inserted into the 1917 Act to cover alien seamen who the United States Supreme Court in *Taylor* v. *United States*, 207 U.S. 120 (1907), had found were not covered by the provisions of prior immigration laws. Moreover, unlike the more ambiguous language emanating from the 1907 act about which Congress manifested its intentions in Senate Report No. 352, the language in Section 34 was specific in providing that an alien seaman had to be "taken into custody and brought before a board of special inquiry" before its statute of limitations could be tolled. In fact, the Court in *Danikas* was careful to distinguish its prior decision in *United States ex rel. Patton* v. *Tod* precisely on these bases. Consequently, based on the consistent manner in which the language in Section 246(a), or statutes emanating from that language, have been construed, the conclusion is inescapable that Congress intended Section 246(a) to be construed like a conventional statute of limitations.

POINT III

Reaffirmance Of The Service's Consistent Construction Of Section 246(a) Will Not Permit It To Delay The Completion Of Rescission Proceedings.

Throughout his memoranda to the District Court and his brief to this Court, Zaoutis has emphasized the delay in the completion of his rescission proceeding. Without reference to his acquiescence in these delays, his failure to object to them or his inability to demonstrate what prejudice resulted, Zaoutis claimed that they arose solely from actions by the Immigration Judge and the Service which severely prejudiced his case. On this basis and the Third Circuit's decision in *Quintana* v. *Holland*, 255 F.2d 161 (3d Cir. 1958), Zaoutis concludes that reaffirmance by this Court of the Service's interpretation of the language used in Section 246(a) would enable "the government to string out, almost indefinitely, the period when the alien's states is in question." (Zaoutis brief page 62). A brief comparison of *Quintana* with the Ninth Circuit's recent decision in *Singh* v. *Immigration and Naturalization Service*, 456 F.2d 1092 (9th Cir. 1970), *cert. denied*, 409 U.S. 847 (1972), as well as the regulations in effect at the time each case was decided, will illustrate the unwarranted nature of Zaoutis' contention.

Both *Quintana* and *Singh* involved aliens, like Zaoutis, who had had rescission proceedings instituted aganst them within five years of their adjustment date but who had not had orders of rescission entered against them until after the five year period had expired. In both cases the Service, pursuant to its long-standing practice, found the rescission orders to be valid and the aliens commenced action in federal court for declaratory judgments to the contrary. In *Quintana*, as in similar cases in the past,

see McCardless v. *United States ex rel. Swystun*, 33 F.2d 882 (3d Cir. 1929); *Hughes* v. *Tropello*, 296 F. 306 (3d Cir. 1924), the Third Circuit refused to inquire into Congress' intentions in enacting Section 246(a) and adopted a plain meaning approach to the statute which resulted in a reversal of the Service's position. In *Singh* the Ninth Circuit refused to follow the Third Circuit decision in *Quintana*, noting that the language in Section 246(a) did not compel the conclusion reached in that case, and upheld the Service's position as it had in prior analogous situations. See *Marty* v. *Nagle*, 44 F.2d 965 (9th Cir.), *appeal dismissed*, 283 U.S. 868 (1930); *Metaxis* v. *Weedin*, 44 F.2d 539 (9th Cir. 1930).

However, as the Court noted in *Singh*, an important difference in the facts underlying these two cases was the regulations governing rescission proceedings in effect at the time. Thus, when the Third Circuit decided *Quintana*, the district director had both the prosecutorial and judicial responsibilities in a rescission proceeding.[13] The Ninth Circuit described the potential for abuse in this situation as follows:

> "The same individual who initiated the rescisson proceeding, in other words, decided the outcome of these proceedings. Therefore the Court in Quintana had to reckon with the distinct possibility that a district director, acting on the basis of mere suspicion, might toll § 246(a) by service of a notice of intent to rescind and then delay the prosecution of the rescission proceedings so that his staff could complete its investigation—a possibility that would defeat the very purpose of a statute of limitations." *Singh, supra* at 1095.

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[13] C.F.R. § 246.12 (1957).

In the intervening period between *Quintana* and *Singh*, and possibly in reaction to the Third Circuit's decision in *Quintana*, the regulations governing rescission proceedings were amended to their present form. As the Court in *Singh* commented:

> Present regulations, however, have alleviated this threat. While prosecutorial duties are still delegated to the district director, the responsibility for deciding whether rescisson is appropriate lies solely with an independent special inquiry officer. If a district director tolls the running of the statute, he cannot prolong the proceedings indefinitely while his staff searches for evidence to support its suspicions. The special inquiry officer controls the pace of the rescission proceeding, much like a judge controls the pace of a lawsuit; he can, as a result, prevent any undue delay that would prejudice the rights of the alien whose adjustment of status is under challenge. See 8 C.F.R. Part 242, especially §§ 242.8(a) and 242.13. *Singh, supra*, at 1096. (footnotes omitted).

In this appeal, Zaoutis acquiesced in each and every delay in his proceeding and never notified either the district director or the Immigration Judge that he was being prejudiced as a result. He surely is in no position to challenge the Service's longstanding construction of Section 246(a). Cf. *United States* v. *Ricco, et al.*, Docket No. 76-1129, at 6169-70 (2d Cir. Decided February 7, 1977); *United States* v. *Wild*, Docket No. 76-1622 (D.C. Cir. Decided January 21, 1977). Moreover, as the comparison between the *Quintana* and *Singh* cases illustrates, this Court's rejection of the District Court's "plain meaning" construction of Section 246(a) would not allow the Service to "string out" an alien's rescission proceeding if the alien protested. Consequently this Court should have no hesitance in reaffirming the Service's construction of that section of the Act.

CONCLUSION

For the foregoing reasons, and those expressed in our main brief, the District Court's decision should be reversed.

Dated: New York, New York
April 21, 1977

Respectfully submitted,

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Form 280 A-Affidavit of Service by Mail
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AFFIDAVIT OF MAILING

State of New York)
County of New York) ss

Thomas H Belote
~~Richard J. Leon~~ being duly sworn, deposes and says that he is employed in the Office of the United States Attorney for the Southern District of New York.

That on the

22nd day of April 1977 he served ~~a copy~~ two copies of the within Reply Brief of Defendants-Appellants

by placing the same in a properly postpaid franked envelope addressed:

Daniel Riesel, Esquire
Winer, Neuberger & Sive
425 Park Avenue
New York, New York 10022

And deponent further says he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Thomas H Belote

Sworn to before me this

22nd day of April, 1977

Ralph T. Lee

RALPH T. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1979